

# Grounds for motion to dismiss



**1. The court has no jurisdiction over the defendant. Jurisdiction over the person of the defendant is acquired by**

(a) personal service on him of the summons; (b) substituted service of summons, that is, at the house, office, or regular place of business; (c) summons by publication, if defendant is unknown or whose address cannot be ascertained by diligent inquiry; (d) his voluntary appearance, except if the purpose of the appearance is precisely to question the jurisdiction of the court over him.

**2. The court has no jurisdiction over the subject matter of the claim.** For example, if the court has no territorial jurisdiction over the land disputed by the parties in a case.

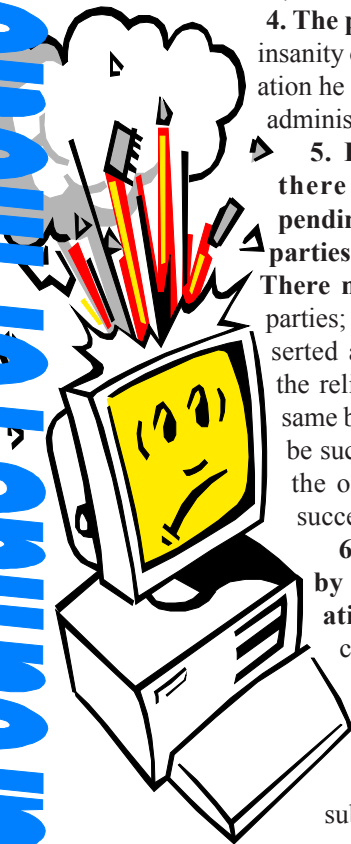
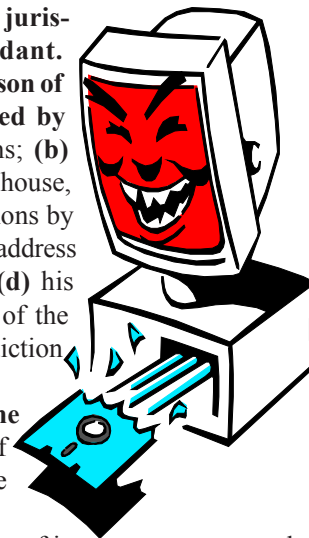
**3. The venue is improperly laid.** The issue of improper venue may be raised in the answer, even if no motion to dismiss has been filed.

**4. The plaintiff has no legal capacity to sue** (minority, insanity or when the plaintiff does not have the representation he claims as when he is not a duly appointed administrator or executor of an estate).

**5. Lis pendens, or when there is another lawsuit pending between the same parties for the same cause.**

There must be (a) identity of parties; (b) identity of rights asserted and relief prayed for; (c) the relief must be founded on the same facts and the same basis; (d) the identity of parties and rights should be such that any judgment which may be rendered in the other action, will regardless of which party is successful, amounts to res judicata.

**6. Res judicata or the cause of action is barred by a prior judgment, or by Statute of Limitations.** Requisites for res judicata are (a) the court rendering the judgment must have had jurisdiction over the subject matter and over the parties; (b) the judgment must be a final judgment; (c) the judgment must be on the merits; (d) there must be identity of parties, of subject matter, and of causes of action.



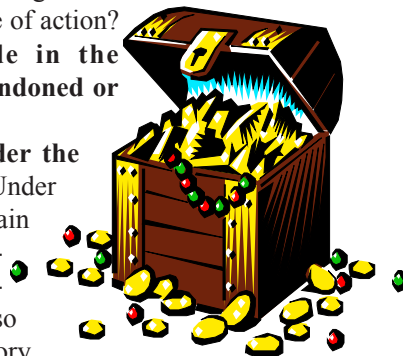
# Actions on motion to dismiss

**7. The complaint states no cause of action.** The fact that there is no cause of action must be evident on the face of the complaint itself. In other words, the test is, assuming the allegations and statements to be true, does the plaintiff have a valid cause of action?

**8. The claim or demand made in the complaint has been paid, waived, abandoned or otherwise extinguished.**

**9. The claim is unenforceable under the provisions of the Statute of Frauds.** Under Article 1403 of the New Civil Code, certain contracts or agreements (like a lease beyond one year) are required to be in writing so that they may be enforced, and so as to prevent fraud, to aid human memory, to prevent injustice, and to discourage intentional misrepresentation.

**10. A condition precedent for filing the claim has not been complied with.** For example, the suit is between members of the same family and no earnest efforts towards compromise have been made. Also, if there was no prior recourse to barangay conciliation between the parties.



**1. If the motion to dismiss is granted, the complaint is dismissed.** Subject to appeal, an order granting the motion to dismiss based on paragraphs 7, 8 and 9 prevents the refile of the same action or claim.

**2. If the motion to dismiss is denied, the defendant can proceed to file an answer within the balance of the fifteen (15) day period to which he was entitled** at the time of the serving of his motion but not less than five (5) days in any event, computed from his receipt of the notice of denial. If the complaint is ordered to be amended, he shall file his answer within ten (10) days from from notice of the order admitting the amended complaint. **He may also file a petition for certiorari or prohibition on the grounds of grave abuse of discretion, or the court's lack or excess of jurisdiction.**

Instead of a motion to dismiss, the defendant may file an answer, citing any of the grounds above as his affirmative defenses. In the discretion of the court, a preliminary hearing may be had as if a motion to dismiss had been filed.